

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-210-DB-2015
Date of Decision: September 13, 2019

Rajesh @ Raja

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Sumit Sangwan, Advocate, for the appellant.

Mrs. Shubhra Singh, Additional AG, Haryana.

Harnaresh Singh Gill, J.

Challenge in the present appeal is to the judgment dated 24.12.2014 and order of sentence dated 2.1.2015 passed by the learned Additional Sessions Judge, Bhiwani, convicting the appellant under Section 302 IPC and sentencing him to undergo imprisonment of life and to a pay fine of Rs.20,000/- and, in default of payment of fine, to further undergo simple imprisonment for three months.

As per the prosecution case, complainant Dharambir submitted an application Ex. P.14/A to the effect that during the intervening night of 27/28.09.2013, his cousin brother Bhagmal, telephonically informed him that appellant-Rajesh had killed Bhateri, wife of his real brother Daya Kishan by

strangulation with shoulder cloth (Gamchha). On hearing the cry, Bhagmal (PW2) along with neighbours reached the house of Daya Kishan by scaling the wall and saw the appellant strangulating the deceased with shoulder cloth and after that he reached there and saw the deceased lying in the last room of her house.

After registration of the FIR, investigation in the case was carried out and challan was presented in the Court.

Charge under Section 302 IPC was framed against the appellant to which, he pleaded not guilty and claimed trial.

Prosecution in order to prove its case had examined as many as 12 witnesses.

PW1-Dr. Ankit, Medical Officer, Dhigal, District Jhajjar, proved on record the post mortem report and stated that the cause of death in this case was asphyxia due to ante-mortem strangulation. In his cross-examination, this witness stated that the instant case was not a suicidal but a homicidal and that the probable duration between the death and postmortem examination was within 24 hours. It was further stated that possibility of sustaining no other injury except the injury caused due to juridical hanging, could not be ruled out.

PW2- Bhagmal, in his examination-in-chief, stated that when he had heard the cries from the house of Daya Kishan, then he started running towards gallery near his house. Thereafter, he entered the house after scaling the wall and found accused Rajesh @ Raja present in the courtyard strangulating the throat of the deceased. However, in his cross-examination,

this witness stated that he did not jump the wall, but accused Rajesh @ Raja jumped from the wall and that he had not seen the accused jumping the wall and saw him coming out of the house when he was caught. He further stated that there was only one exit in the house of Bhateri. He further stated that he could not scale the wall because he had been having problems in his legs for the last 4-5 years.

PW3-ASI Suresh Kumar, Police Station Sadar Bhiwani, deposed regarding his being associated with the SHO Davender Singh in the process of lifting of the dead body and getting its post mortem examination conducted.

PW4-EHC Kapoor Singh is the photographer, who proved photographs Exs.P5 to P.12.

PW5- ESI Prem Singh and PW6-Constable Guru Sewak Singh are the formal witnesses.

PW7-Dharamender Singh, Draftsman, SP Office, Bhiwani, while proving on record the site plan Ex.P15, stated that the wall adjoining the courtyard as shown in the scaled site plan was around 8 to 10 feet and the wall which lay opposite was 8 to 10 feet in height. It was further stated that there was only one point of entry in the house and that there was no window in the room on the back side. It was further stated that when he visited the place of occurrence, the room was in orderly condition.

PW8-L/SI Santosh Devi, Poice Station Police Line, Bhiwani, had proved on record the registration of the FIR by the said witness herself.

PW9-ASI Prem Kumar, Police Station Tosham, deposed in his cross-examination that the place of occurrence was inspected by the Investigation Officer in his presence. He further stated that the height of the boundary wall was 6.5/7 feet and that accused-Rajesh had been arrested in his presence. He further stated that the alleged disclosure statement had been made by the accused in his presence.

PW10-HC Anil Kumar, is a formal witness.

PW11-Dharambir (complainant) in his examination-in-chief stated that he had seen accused-Rajesh strangulating Bhateri with Gamchha. He further stated that accused-Rajesh had run away from the spot after seeing him. The said witness, in his cross-examination, stated that he had been given in adoption by his father to his uncle (Tau-father's elder brother) and as such he had inherited his property in succession as his uncle had died intestate. He further stated that the property of his father, had been transferred by way of a Will in favour of his sisters and that such Will had been executed prior to the death of Bhateri. It was further stated that accused Rajesh used to live with Bhateri and visit her regularly and Bhateri had issued threats to Laxman (Daya Kishan's father) that she would dispose of the property according to her will, which is why Laxman had made a Will against the wishes of Bhateri. The height of the boundary wall of the house of Bhateri was 7 feet. This witness further denied the suggestion that Bhateri was killed by his family members on account of property dispute

with her. He further stated that he was told by Bhagmal that Bhateri Devi was murdered by accused-Rajesh.

PW12-Devender Singh, SHO in his examination-in-chief had deposed about the factum of the registration of the FIR; conducting inquest proceedings; recording of statements of the witnesses under Section 161 Cr.P.C. and thereafter, handing over the dead body to ASI Suresh for postmortem examination at General Hospital, Bhiwani. He further deposed about the arrest of the accused; making of disclosure statement by the accused and recovery of Gamchha, used by the accused for committing the murder of deceased Bhateri. In his cross-examination, this witness stated that he did not conduct any investigation regarding the time gap between the death and reporting of the matter to the police neither did he conduct any investigation regarding the relations between Daya Kishan and Batheri. He further stated that no independent witness was joined in the investigation as none came forward. It was further stated that the recovery of Gamchha was made at the instance of accused-Rajesh.

Besides, the oral account as referred to above, the prosecution produced the documentary evidence in the form of Ex.P1 to Ex.22 and Ex.MO-I.

Statement of accused under Section 313 Cr.P.C. was recorded, wherein while denying the charge, the accused-appellant pleaded innocence. In defence, he had examined 4 witnesses.

DW1-Baljeet, in his examination-in-chief, stated that Bhateri (deceased) and accused Rajesh @ Raja were his neighbours in the same street and that they both had been in visiting terms. He further stated that there was a property dispute between Laxman (father-in-law of the deceased) and Bhateri and that accused Rajesh had been helping her. Two months prior to the incident, Bhateri had left her home alongwith her buffaloes due to this dispute. This dispute was regarding claim of partition by Bhateri, which was not acceptable to her father-in-law. In his cross-examination this witness stated that he did not inform the police about the factum of dispute between the deceased and her father-in-law (Laxman). He further denied the suggestion of there being any enmity between him and the sons of Laxman.

DW2-Krishan in his examination-in-chief stated that accused Rajesh (his brother) had asked Laxman to give Bhateri's share to her whereupon Laxman got annoyed. Laxman was also annoyed with accused Rajesh as Rajesh had been helping the deceased. Two months prior to the death of Bhateri, Laxman came to their house and issued threats to Rajesh @ Raja that he should desist himself from interfering in the family matters of Laxman. He further stated that on the date of occurrence, Rajesh @ Raja had been sleeping in his house. In his cross-examination, this witness stated that he had not informed the police authorities or any civil authority about the dispute between Bhateri and her father-in-law Laxman.

DW3-Shree Bhatwan is the Registration Clerk in the office of Sub-Registrar, Bhiwani. The said witness brought the original Will dated 4.9.2013 executed by Laxman in favour of his daughters, namely, Tarawati @ Guddi, Chander Kalan and Shakuntla.

DW4-Kanwarpal Parmar is the Architect, proved on record site plan at points 'X' and 'Y' and deposed that he had prepared the said site plan at the asking of Mr. Rajesh Dhaka, Advocate. He further deposed that at the time of preparation of the scaled site plan, no public person or respectable of the village, was present at that time.

After taking into consideration the evidence led by the parties and further having considered the rival contentions, as noticed above, the learned trial Court vide the impugned judgment convicted the appellant under Section 302 IPC and sentenced him accordingly.

We have heard learned counsel for the parties and with their able assistance, have gone through the entire record of the case.

Learned counsel for the appellant has argued that presence of PW2-Bhagmal, the alleged eye witness of the occurrence, is doubtful because in his statement, he stated that after hearing cries he had entered the house by scaling the wall, whereas in his cross-examination, he stated that he had not scaled the wall and rather it was the appellant, who had jumped the wall after committing the crime. It is further alleged that there is delay in lodging the FIR and such delay is unexplained

causing dent in the very story put forth by the prosecution. PW11-Dharambir, complainant received telephonic information during in the night of 27.9.2013, but he got the case registered on 28.9.2013.

Learned counsel for the appellant has further argued that the husband of the deceased had not stepped into the witness box. The father-in-law of the deceased had executed a 'Will' in favour of his three daughters. Since the deceased was raising her voice for property, the family members of the deceased, had murdered her and since the appellant was extending his help to the deceased with regard to the property, he had falsely been implicated. Still further, it has been argued that Bhagmal stated that Sunder, Rakesh and Monu were present there to whom he had disclosed regarding the occurrence, but neither of the persons present i.e. Sunder, Rakesh or Monu, had stepped into the witness box to support the version of the prosecution, nor any Lambardar, Sarpanch or any other respectable had been joined in the investigation

Per contra, learned State counsel has argued that on the intervening night of 27/28.09.2013, the deceased was alone at her house as her husband Daya Kishan, being a truck driver was not at his home. PW2-Bhagmal alongwith three persons heard the cries and reached the spot and saw the appellant committing the murder of Bhateri (deceased), but somehow the appellant had escaped from the scene of occurrence.

It is further argued that on the disclosure statement (Ex.P.18) of the appellant, shoulder cloth (Ex.MO-1) was

recovered and even as per the medical opinion, the cause of death was asphyxia due to ante-mortem strangulation and the Medical Officer had also opined that strangulation could be caused by the shoulder cloth (Gamchha).

After hearing the learned counsel for the parties and having gone through the record of the case minutely, we are of the considered opinion that the arguments raised by the learned counsel for the appellant, has merit and deserve acceptance.

The presence of Bhagmal at the scene of occurrence is doubtful. In one breath, the said witness states that he climbed the wall and went inside and saw the appellant strangulating the deceased, but in his cross-examination, he states that he was standing outside, when the appellant came out of the house after committing the crime.

As per site plans (Ex.P.15 and Ex.P.20), the height of the wall is 7'-6" and Bhagmal (PW2) admits that he had problem in his leg. Thus, he could not have scaled the wall. Hence, it cannot be said if Bhagmal had seen the occurrence. Even as per the site plan, Ex.P15, the occurrence took place in the last room of the house and admittedly, there was no window and only one entry point was there. Thus, it was not possible for Bhagmal to see the occurrence from the wall of the house.

Still further, the appellant had been arrested from his home, meaning thereby, the appellant had not fled from the village. This indicates that he was present at his home as there was no fear in his mind of being involved in the murder.

Also taking the defence of the appellant into consideration, Ex. D1 is a registered Will dated 4.9.2013 i.e. 22 days before the occurrence i.e. 27/28.9.2013, executed by the father-in-law of the deceased in favour of his three daughters. The complainant was adopted by his uncle (Taya) and husband of the deceased was deprived of the ancestral property. As per DW1-Baljeet Singh and DW2-Krishan, the appellant was helping the deceased in this matter as he had protested to the father-in-law of the deceased on this subject and as a consequence, the appellant had received threats from Laxman i.e. father-in-law of the deceased.

Admittedly, the incident occurred on the night of 27.9.2013. PW11-Complainant Dharambir, had received the information there and then but FIR in question was registered on 28.9.2013. Thus, there is unexplained delay in registration of the FIR. Though, in normal circumstances the delay of one day in registration of the FIR is immaterial, yet keeping in view the evidence on record in the present case, which points towards the dispute of property angle on the basis of the registered Will executed by Laxman (father-in-law of the deceased), possibility of such delay for being used for consultation and deliberations, cannot be ruled out.

To our mind, the story of the prosecution is doubtful and the link evidence is missing in the present case, as the prosecution has not proved the case beyond the shadow of reasonable doubt.

In view of the above, we find that the impugned judgment and order passed by the learned Additional Sessions Judge, Bhiwani, are not tenable. Hence, the same are set aside. The appellant is acquitted of the charge framed against him. Bail/Surety bonds shall stand discharged.

(RAJIV SHARMA)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

September 13, 2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No